


FRIENDS OF SAN LORENZO CREEK

Date: October 7, 2020

To: Nisha Chauhan, Senior Planner
Alameda County Planning Department
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Hayward, CA 94544

From: Bruce King
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Cc: ACPWA: Hank Ackerman (Flood Control), Andy Cho (Grading),
John Rogers (Permits), Arthur Valderrama (Land Development)
Marcia Grefsrud, CDFW
Brian Wines, Water Board
Chris Higgins, Fairview MAC

Subject: Friends of San Lorenzo Creek Comments on PLN2020-00218
Application for a Conditional Use Permit to Fly Aircraft at 27172 Fairview Ave

This letter provides comments from Friends of San Lorenzo Creek (FSLC) on an Application for a Conditional Use Permit (CUP) to allow the applicant to fly personal aircraft near his property located at 27172 Fairview Avenue as presented in the Project Referral dated September 17, 2020.

GENERAL OBSERVATIONS & COMMENTS

The proposed flight strip is on a creek on an agricultural zoned parcel that is covered by the urban growth limit requirements. See maps in Attachment A.

The flight strip related to this application is in the San Lorenzo Creek watershed and is on a USGS perennial stream (or creek) that is a tributary of Palomares Creek. An unspecified length of the creek was reportedly placed in an underground culvert covered a CDFW 1989 Streambed Alteration Agreement, but additional extensive grading and fill has been and is currently occurring.

The application does not detail the location of the unpermitted flight strip and its unpermitted support facilities (hangers, storage containers, roads, and new areas of fill) relative to the location of the creek, 1989 culverts, minimum creek setbacks, and riparian & vegetation areas that contribute to creek function and values. In addition, the County developed a short list of 1988 to 2007 permits related to this site, but this list does not provide sufficient information to indicate that construction of the flight strip, flight strip support facilities, and later grading & filling of the valley and creek area has been reviewed or permitted by the County.

County Planning has been stating that “the CUP is for the activity of flying an airplane for a flight strip that is already present” (paraphrased). FSLC contends that the constructed flight strip, support facilities, and post 1998 grading & fill have not necessarily been permitted.

Any development that has been completed without permits should be removed and/or mitigated. Any unpermitted development within the creek setback or its riparian corridor should be removed, and these creek areas should be restored.

RECOMMENDED ACTIONS

1.0 Define the Developments, Permit Status, Creek, Habitat, and Wildlife

The applicant (with County oversight) needs to detail with site plans and documents the location, extent, and permit status of each area of grading and fill over time, proposed flight strip, and support facilities (hangers, storage containers, roads to and at the site, and new areas of fill). FSLC is especially concerned about these developments relative to the location of the creek, 1989 culverts, minimum creek setbacks, riparian & vegetation areas that contribute to creek function and values, and special status species.

1.1 Define Creek, Habitat, and Wildlife

- Define the location, length, and extent of the creek culvert and earthen fill that was approved under a 1989 CDFW Lake and Streambed Alteration Agreement
- Define the location and presence of the 20 native species trees (black walnut, oak, bay, etc.) that the 1989 CDFW agreement required to be planted along the relocated flow line of the creek.
- Define the location of natural creek that was not culverted under the 1989 CDFW agreement, along with the location of natural creek that exists today. These locations also need to include the locations of the creek toe and minimum creek setback (see Attachment B)
- Assess, describe, and locate habitat and wildlife, including:
 - Native trees, woodland, and vegetation
 - Potential Red-legged frog and Alameda whipsnake habitat (see CDFW critical habitat in Attachment C)

1.2 Define Grading and Fill

Note that a representative of the applicant claimed there has been no grading since 1989, but conditions at the site do not appear to be consistent with this claim.

- Define the location and extent of the creek culvert and earthen fill that was approved under a 1989 CDFW Lake and Streambed Alteration Agreement. Determine if the County also approved this fill.
- Define the location, extent, and County-permit-approval status for the following applications that County engineer Andy Cho reports finding:
 - August 10, 1988. Grading permit application for horse training area
 - December 31, 2003. Grading permit application for planting new grape vineyard
 - September 7, 2007. Grading permit application to legalize private garage
 - 2007. Undocumented fill at the subject site that was recorded against the property

- Define the location and extent of other (possibly unpermitted) grading and fills at and supporting the proposed flight strip site. Examples include:
 - 2020. Grading and fill shown on 2020 Goggle Earth images (see Attachment D) as extensive, newer, unpermitted earth moving at the north end of the flight strip. Images appear to show several pieces of heavy equipment such as a bulldozer that were pushing dirt over the edge into large areas of trees and possibly the creek in the lower valley. The location of the creek in this valley area is not apparent on the satellite images.
 - 2000-2005. Grading and fill shown on 2000 versus 2005 Goggle Earth images (see Attachment D) as filling in the uphill drainage area at the north-west end of the flight strip to create more flat area and possibly a new section of road to access the flight strip.

1.3 Define Structures and Other Developments

Define the location and permit status of all structures and other developments that require permits. For example, this includes roads, buildings, hangers. Under the Watercourse Protection Ordinance (WPO), this also includes structures and alterations to the natural landscape that is within the creek setback.

2.0 Implement and/or Enforce Requirements

2.1 Watercourse Protection Ordinance

- a) Setback and Development Restrictions General Requirements. Ensure that creek setbacks as defined in the Watercourse Protection Ordinance (WPO) are determined and include a 2:1 slope from the creek toe, plus 20 feet MINIMUM, plus any riparian areas. Do not allow "development" or "structures" as defined in the WPO within this determined creek setback, especially development or structures that do not have permits. See Attachment B for WPO requirements and criteria.
- b) Show Setbacks and Riparian Areas on Plans. Specifically show on the site plans and in representative cross sections the creek mid-line, creek toe, the WPO 2:1 slope from the creek toe, the WPO top-of-bank where the slope is less than 2:1, and the location of woodland.
- c) Remove developments and restore creek setback areas. Remove and/or stop WPO-defined "developments" in setback areas, including structures and activities such as: structures, hangers, storage containers, land grading and fills, roads, parking areas, fences, piling debris, and activities that move/disturb natural materials such soils and vegetation. Restore compacted soils and replant with locally endemic, native vegetation in any setback areas that were damaged.
- d) Plan and install fences and markers to protect and designate setback areas. Fences should be installed at creek setback boundaries where people or vehicles may likely go. Permanent markers should also be included in the plans to designate the location of the creek setback boundary.

2.2 Measure D Urban Growth Requirements

This parcel and proposed development are outside the urban growth limit (See map in Attachment A). Proposed uses and development must comply with the Measure D urban growth requirements such as Floor Area Ratio (FAR) requirements. Assess compliance with Measure D.

2.3 Other Requirements and Permits

Ensure allowable developments have been permitted and non-compliant development removed or mitigated. Example permits and requirements include: Building permits, grading permits, soil importing permits, stormwater management permits, CDFW and Water Board stream permits, CDFW special status species habitat requirements, California Oak Woodlands Conservation Act requirements, and General Plan requirements.

2.4 CEQA

The CEQA analysis needs to include flying airplanes and the physical developments on the ground that are needed to support flying airplanes (e.g., as discussed above). Developments that have not been previously approved with permits should be assessed as impacts associated with the proposed flight strip.

ATTACHMENT A

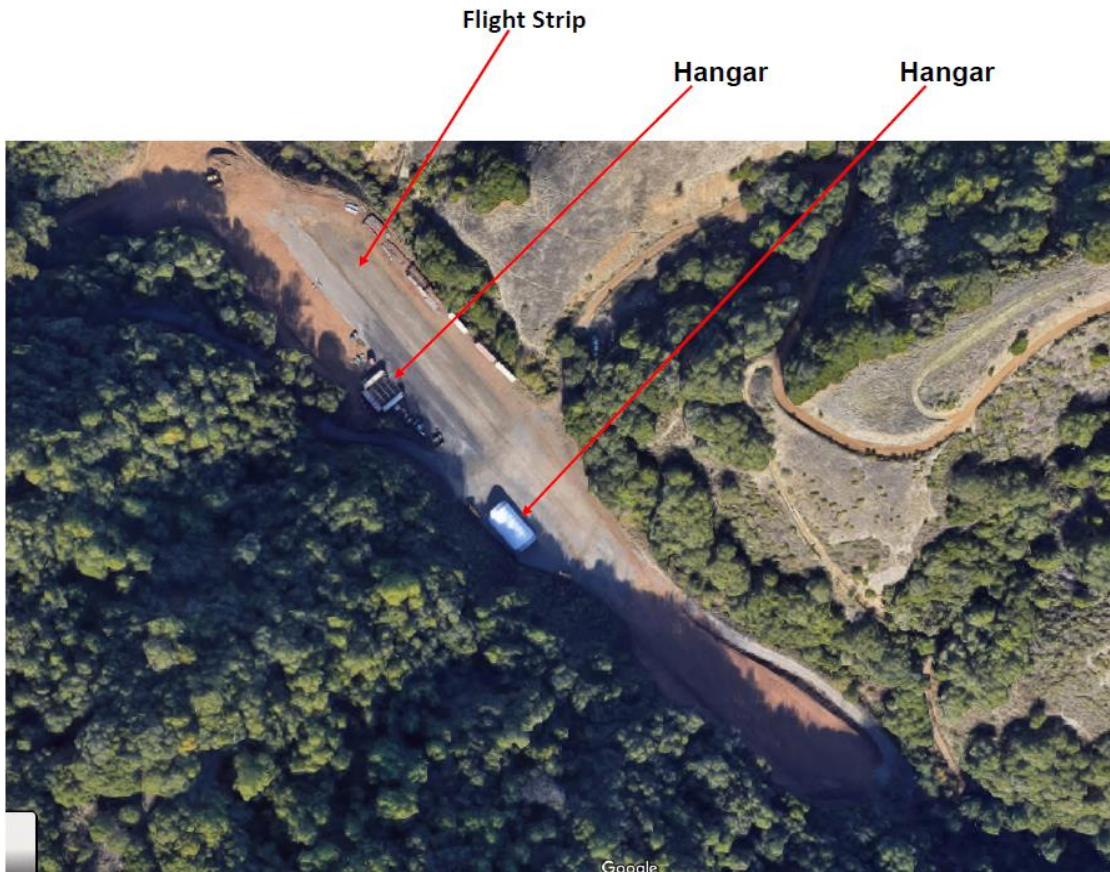
Location of Flight Strip Relative to Creek and Urban Growth Boundary



Location of proposed Flight Strip relative to the Fairview and Urban Growth Boundary

Map adapted by Bruce King from Google maps with location of urban growth boundary taken from Measure D documents

ATTACHMENT A
Location of Flight Strip Relative to Creek and Growth Boundary
(continued)

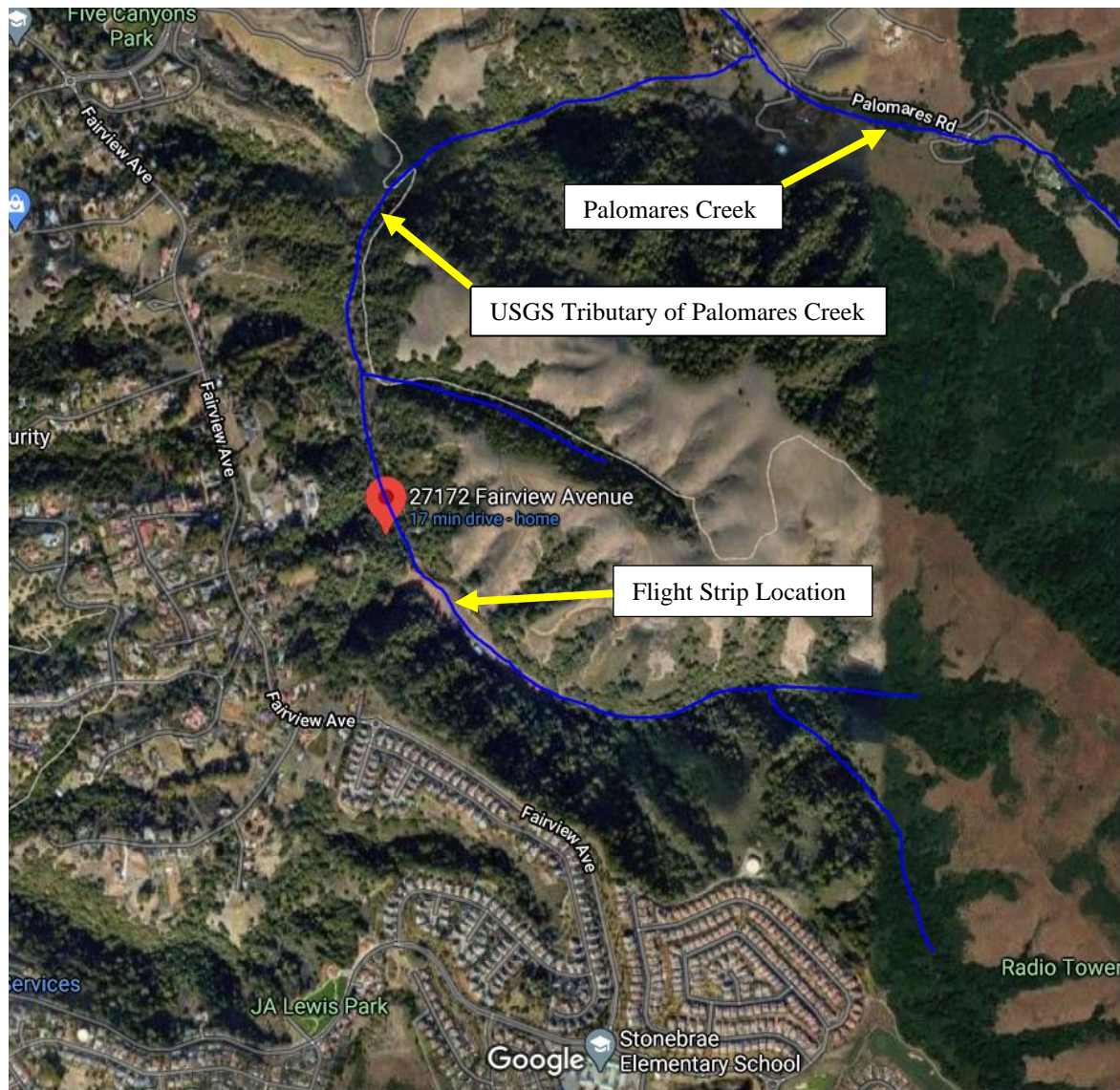


Aerial View of Proposed Flight Strip

Excerpted from the conditional use permit application

ATTACHMENT A

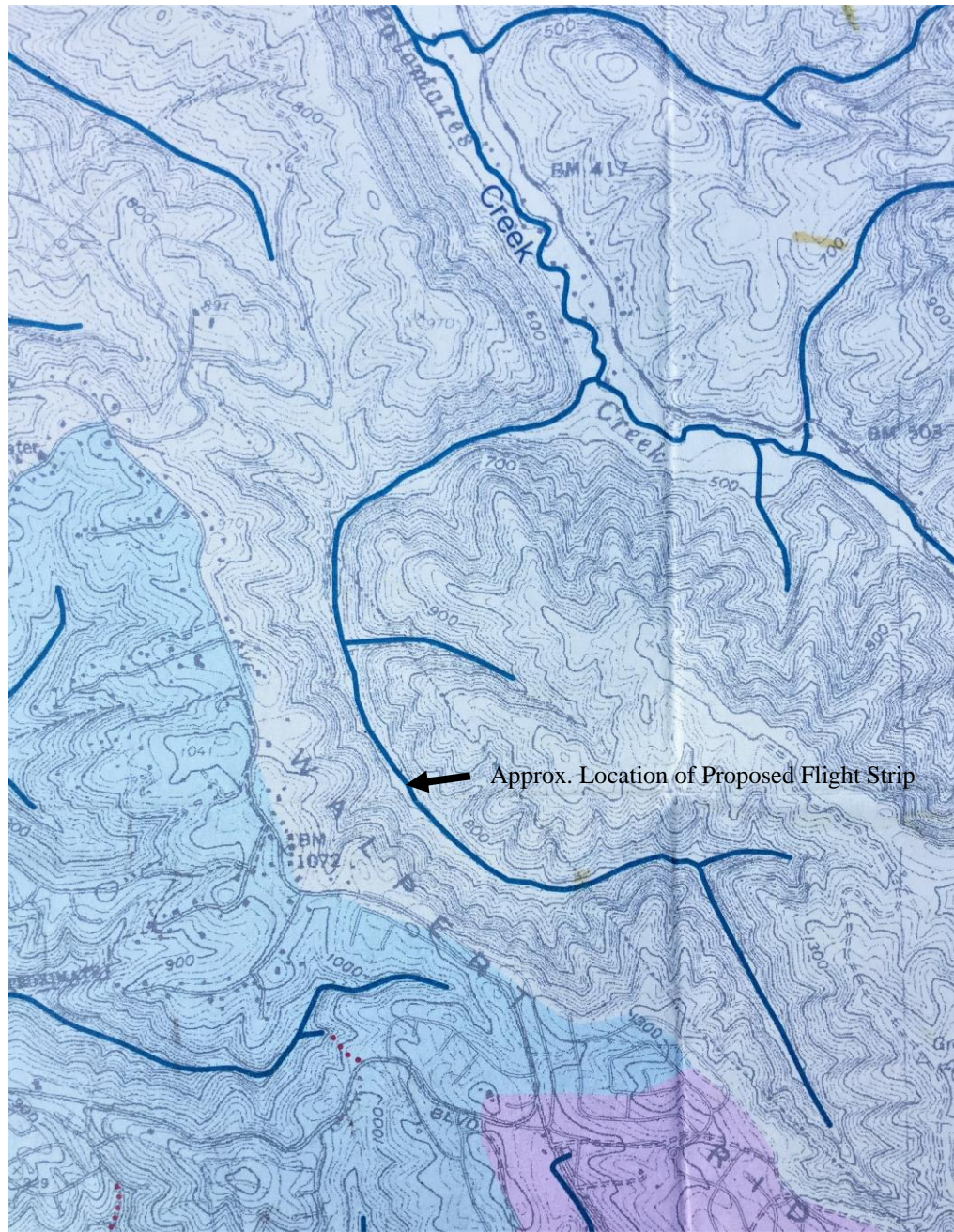
Location of Flight Strip Relative to Creek and Growth Boundary (continued)



Location of Proposed Flight Strip on Tributary of Palomares Creek

Adapted by Bruce King from Google Maps with location of creek taken from Oakland Museum watershed map

ATTACHMENT A
Location of Flight Strip Relative to Creek and Growth Boundary
(continued)



**Creek map showing location of Proposed flight strip and
Tributary of Palomares Creek**

Blue lines are creeks with watershed area >0.2 km² or 50 acres

Adapted from Creek and Watershed Map of Hayward and San Leandro, Oakland Museum of California 2011

ATTACHMENT A

Location of Flight Strip Relative to Creek and Growth Boundary (continued)

USGS Tributary of Palomares Creek at or near flight strip

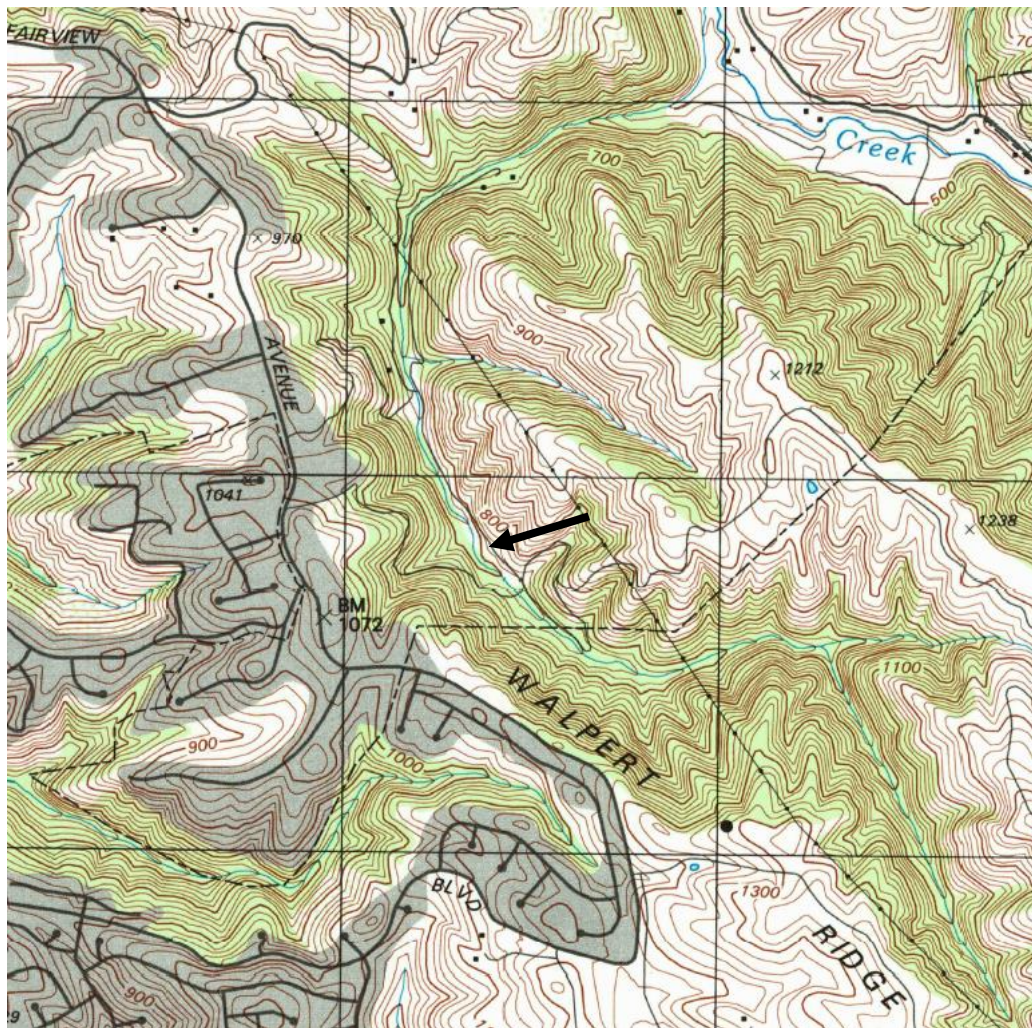
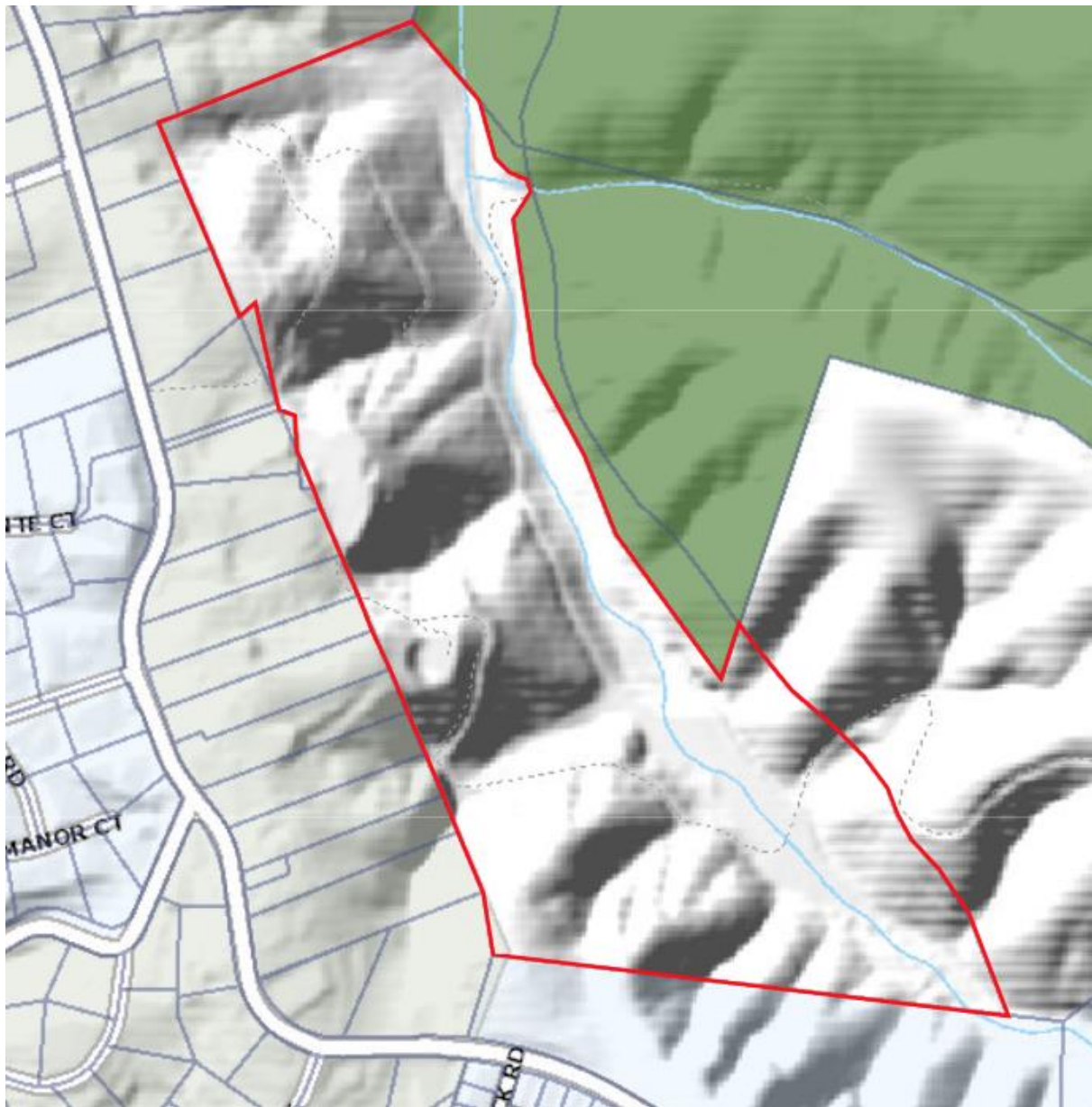


Figure 2. Excerpts of a U.S. Geological Survey (USGS) 7.5-minute map showing the unnamed tributary of Eden Creek at the project site. The Watercourse Protection Ordinance (WPO) is therefore applicable to the project streams, since Section 13.12.030 of the WPO defines a watercourse as follows:

"Watercourse" means any conduit or appurtenant structure or any natural or manmade channel through which water flows continuously or intermittently in a definite direction and course or which is used for the holding, delay or storage of water. Natural channels shall generally be limited to those designated by a solid line or dash and three dots as shown in blue on the U.S. Geological Survey 7.5 minute series of topographic maps.

ATTACHMENT A
Location of Flight Strip Relative to Creek and Growth Boundary
(continued)



Accessor Parcel Number (APN) 85A-6200-1-7

Source: Alameda County Assessor's Office Parcel Viewer

ATTACHMENT B

Excerpts of the Watercourse Protection Ordinance Setback and Development Requirements

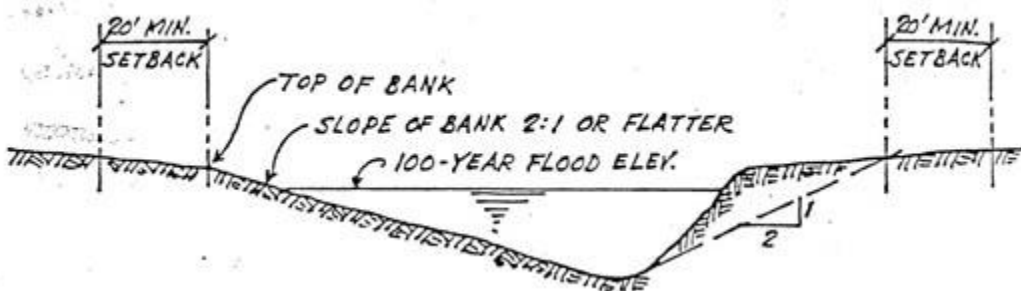
Alameda County General Ordinances, Chapter 13.12

Section 13.12.040 - Jurisdiction

This chapter shall apply to the unincorporated area of Alameda County.

Section 13.12.320: Setback Criteria (Excerpts only)

Section A - Typical where 100-year storm flow is contained within banks of existing watercourse.



Section 13.12.310: Requirements (Excerpts only)

- The purpose of setbacks is to safeguard watercourses by preventing activities that would contribute significantly to flooding, erosion or sedimentation, would inhibit access for watercourse maintenance, or would destroy riparian areas or inhibit their restoration. Accordingly, no development shall be permitted within setbacks, except as otherwise provided herein.
- In certain situations, where, in the opinion of the director of public works, it would be in the public interest to permit limited development within a setback, the director of public works may grant a permit for said development provided that the above-specified purpose would be satisfied.
- The director of public works shall make the determination as to setback limits and any permitted development within a setback.

In addition, WPO Section 13.12.030 defines the following terms:

- "Development" means any act of filling, depositing, excavating or removing any natural material, or constructing, reconstructing or enlarging any structure, which requires a permit issued by the dii 1993 USGS Hayward, CA 7.5-minute map
- "Structure" means any works or constructions of any kind, including those of earth or rock, permanent or temporary, and including fences, poles, buildings, pavings, inlets, levees, tide gates, spillways, drop structures and similar facilities.
- "Permit" means a permit issued by the director of public works pursuant to the provisions of this chapter. [Click here to see copy of ACFCWCD [Water Course Permit](#)]

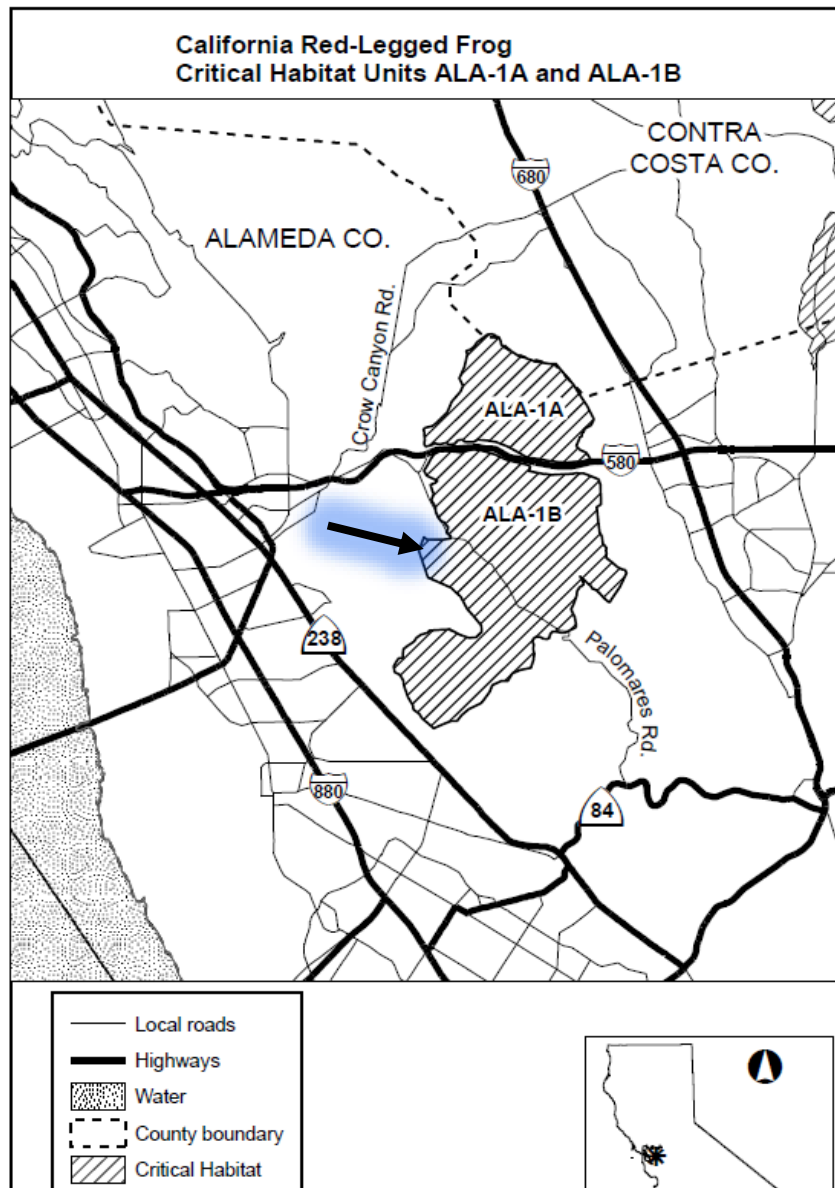
See all definitions and requirements of the WPO (~9 pages) online at:

- The body of the ordinance, but not the setback criteria is at:
https://library.municode.com/ca/alameda_county/codes/code_of_ordinances?nodeId=TIT13PU SE_CH13.12WAPR
- Set Back Criteria diagrams are at: <http://friendsofsanlorenzocreek.org/ord13-12-320.htm>

ATTACHMENT C

Threatened Species Habitat Locations

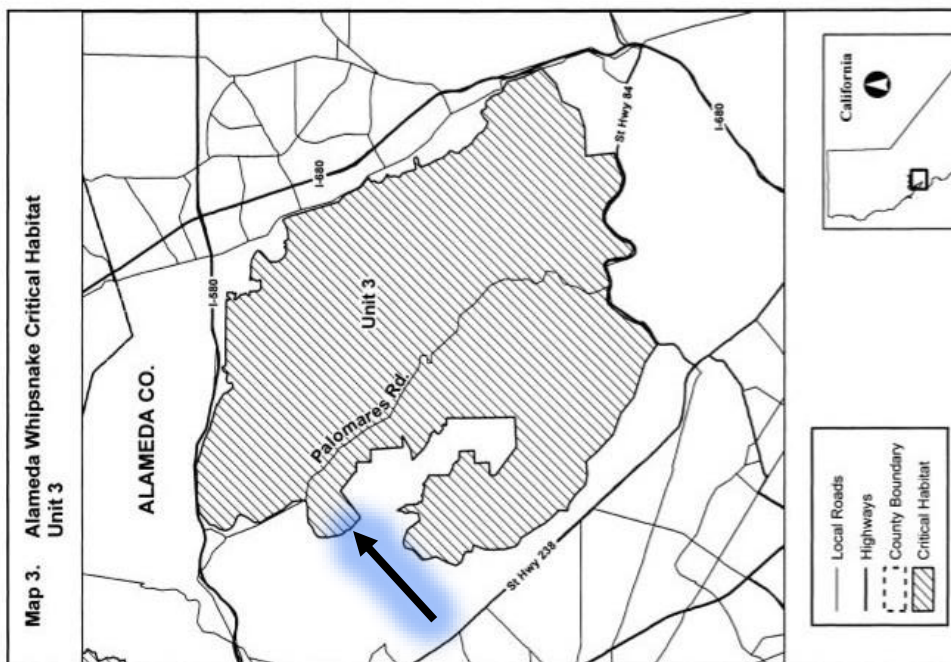
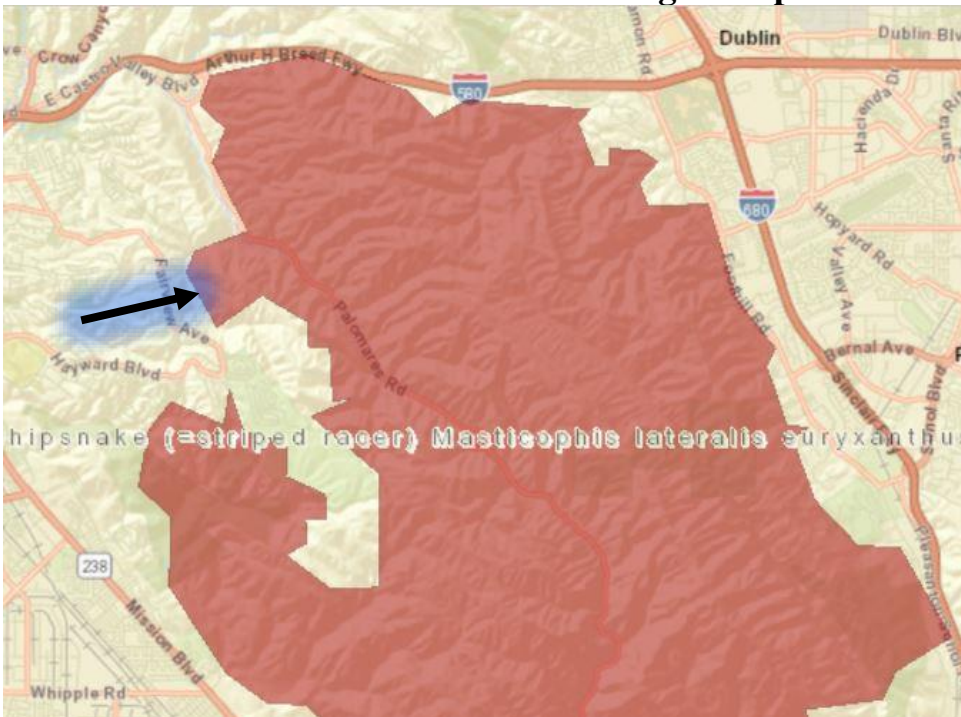
California Red-Legged Frog Critical Habitat Unit 3



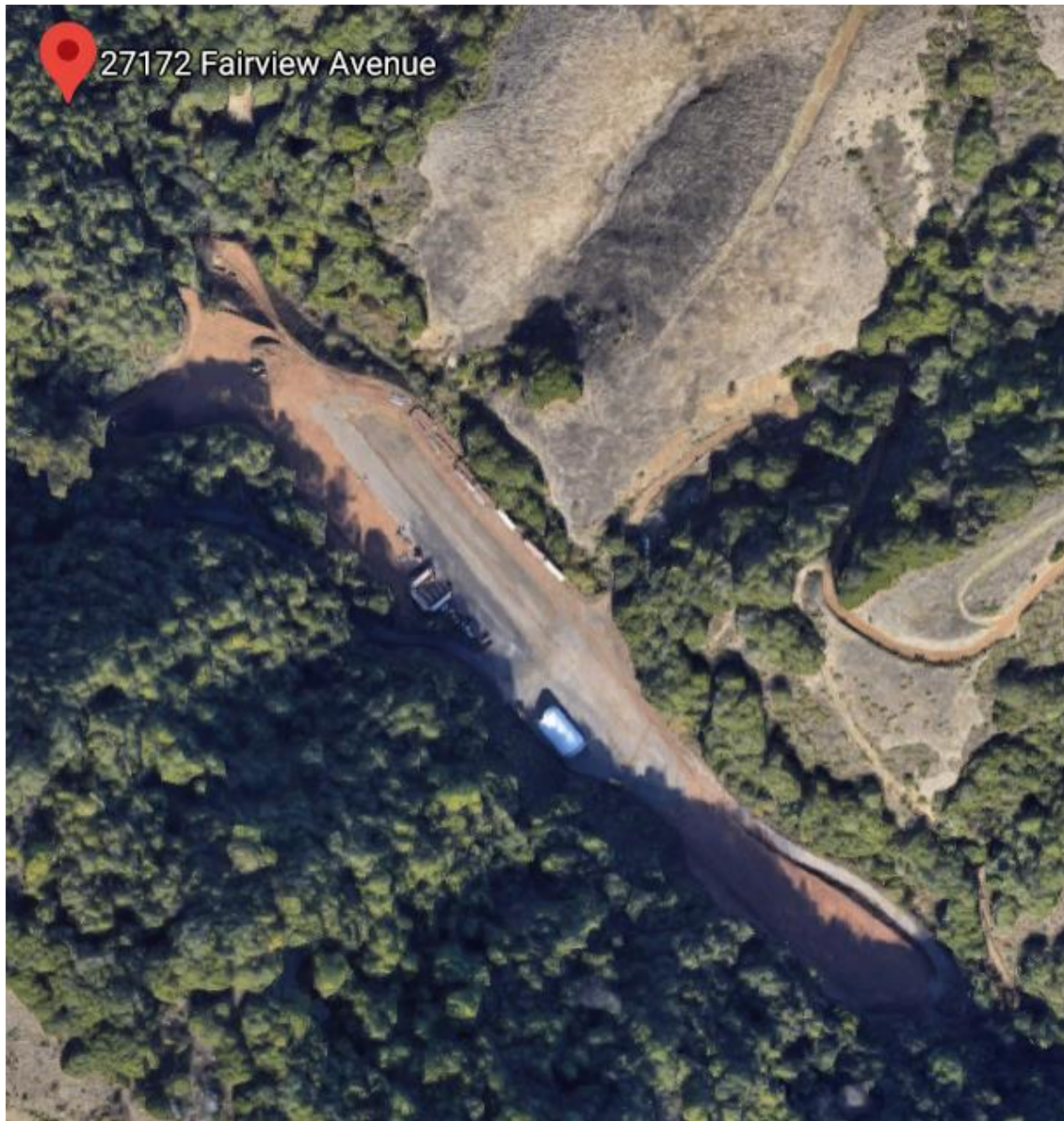
ATTACHMENT C

Threatened Species Habitat Locations (continued)

Alameda Whipsnake Critical Habitat Unit 3 Portion of Unit 3 habitat area near the flight strip



ATTACHMENT D
Historical Aerial Views of Flight Strip Area
Showing Example of Newer Grading & Filling



Entire Site of Proposed Flight Strip. Google Maps 2020



Newer Grading at north end of site. Google Maps 2020.



Newer Grading at north end of site. Closer View. Google Maps 2020.



Newer Grading at north end of site. Closer Section View. Google Maps 2020.



Newer Grading at north end of site. Closer Section View. Google Maps 2020.



North End of Site. Google Earth October 26, 2018



North End of Site. Google Earth April 21, 2005



North End of Site. Google Earth September 30, 2002



Entire Site. Google Earth April 21, 2005



Entire Site. Google Earth July 9, 1993